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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No.439 of 2006

Date of decision: 5.2.2007

M/S Bansal Polutry and Feed Industries, Sherpur Road, village Benra,

Dhuri, District Sangrur ...Petitioner

Versus

Commissioner of Incme Tax, Ludhiana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Aman Bansal, Advocate for the appellant.

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RAJESH BINDAL, J.

The appellant has approached this Court by filing the present appeal under Section 260-A of Income Tax Act, 1961 (for short 'the Act') against the order dated 4.4.2006 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (for short 'the Tribunal') in ITA Nos. 233 & 234/Chandi/2003 in respect of the assessment years 1996-97 & 1997-98 by seeking to raise the following substantial questions of law:-

1. Whether in the facts and circumstances of the present case, the action of authorities below to disallow the deduction relying upon the Hon'ble Apex judgment without appreciating the true facts and circumstances of the present case is legally sustainable in the eyes of law?
2. Whether in the facts and circumstances of the present case, the action of the authorities below not to consider

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that the issue regarding interest under section 234 B of the Act has already been decided by the authorities below, is legally sustainable in the eyes of law?

3. Whether in the facts and circumstances of the present case the impugned orders Annexure A-1 and A-3 are legally sustainable in the eyes of law?"

Briefly the facts are that the assessee who is engaged in the business of poultry farm was granted deduction under Sections 80-I, 80-JJ and 80-HH of the Act, while framing the assessment. However, subsequent thereto in view of judgment of Hon'ble the Supreme Court in **Commissioner of Income-Tax Vs. Venkateswara Hatcheries (P.) Ltd. and others (1999) 237 ITR 174**, proceedings under Section 148 of the Act were initiated.

At the time of hearing, it could not be denied by the learned counsel for the appellant that as far as the issue on merits is concerned, the same is squarely covered by the judgment of Hon'ble Supreme Court in Venkateswara's case (Supra), however, he was at pains to contend that the proceedings could not be initiated under Section 148 of the Act after the judgment of Hon'ble Supreme Court. However, he failed to persuade us to accept that a subsequent judgment did not constitute information enabling action under Section 148 of the Act.

As far as levy of interest under under Section 234 B of the Act is concerned, the matter has merely been remitted to the Commissioner of Income Tax (Appeals) for fresh decision on merits in accordance with law. Against the order of remand no appeal is maintainable.

In view of our above discussions, we do not find that any substantial question of law would arise in the present appeal and the same is dismissed.

(Rajesh Bindal)
Judge

February 05 ,2007 **(M.M.Kumar)**
Pka **Judge**

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This appeal has been preferred under Section 260-A of Income Tax Act, 1961 proposing the following substantial question of law arising out of the common order dated 4.4.2006 of the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh passed in ITA Nos. 233 & 234/Chandi/2003 in respect of the assessment years 1996-97 & 1997-98:-